

REMARKS

Responsive to the Office Action mailed 18 March 2009 and with an extension of time to reply of one month, the present paper is timely filed on or before 20 July 2009, the first day after 18 July 2009 that is not a Saturday, Sunday, or Holiday in the District of Columbia.

By the present paper, claims 26, 40, 41, and 46 are cancelled without prejudice or disclaimer of subject matter therein, claims 25, 29, 36, 37, 38, and 47 are amended, and new claim 48 is presented. Claims 25, 27 - 39, 42 - 45, and 48 are thus in the Application. Entry of the claim amendments, new claim 48, and reconsideration of the Application are respectfully requested.

The Claim Amendments:

Claim 25 is amended to incorporate the elements of claim 26 and to include the limitations that the supply channel is contiguous with and opens into the resting chamber. Support for the amendments can be found in the specification at, for example, 8:4-8, 11:18 to 12:1, and 15:10-14, as well as in the claims.

Claim 29 is amended to correct obvious syntax errors.

Claims 36, 37, and 38 are amended to correct an obvious error in their dependency, responsible for rejection of some claims under 35 U.S.C. § 112. Applicants respectfully submit that support for the amendment is apparent.

Claim 39 is amended to correct an obvious error in its dependency.

Claim 47 is amended to recite that the injection-moldable thermoplastic usable in the manufacture of the inventive indicator or the present invention has a heat resistance of 121° C or more. Support for this amendment can be found in the specification at, for example, page 1, lines 8 - 10 where end-use requirements are disclosed. The skilled artisan would know that injection moldable thermoplastics that can survive this environment were intended.

Applicants respectfully submit that the claim amendments do not introduce new matter into the Application.

The New Claims:

New claim 48 is drawn to essentially the same subject matter as (amended) claims 25 and 47. Support for new claim 48 is similarly found. Applicants respectfully submit that new claim 48 does not introduce new matter into the Application.

Claim Rejections Under 35 U.S.C. § 112:

Claim 39 was rejected under 35 U.S.C. § 112 as allegedly indefinite. Claim 39 is amended to depend from claim 38, which is amended to depend from claim 33 to correct an obvious scrivener's error. Applicants respectfully submit that amendment of claim 38 to depend from claim 33 removes any latent ambiguity that may have existed.

Claim Rejections Under 35 U.S.C. § 103:

Claims 25 - 39, 40 - 44, 46, and 47 were rejected under 35 U.S.C. § 102 as allegedly anticipated by Richard Imburgia, United States Patent 5,750,184 (Imburgia). Because Imburgia does not teach all of the elements of at least claims 25 and 27, arranged as required by the claims, Applicants respectfully traverse.

The indicator of Imburgia is formed of flexible, deformable material, as it must be, in order to allow the ampoule to be fractured. Applicants' inventive indicator is formed of metal, injection moldable thermoplastic, or both. The required materials of construction for Applicants' inventive indicator are not recognized in the art as flexible.

The tortuous path of Imburgia is fashioned entirely in one layer or planar part of the indicator therein disclosed. In Applicants' inventive indicator, at least a portion of the supply line (tortuous path) must be formed of a sidewall of one housing part and another portion (or the same portion) of the supply chamber

must be formed of a rib on an interior surface of the same or a different housing part.

Although a prior art drawing that is not clearly “to scale” cannot be considered to disclose particular dimensions, the drawing is still a disclosure of what the skilled artisan would perceive from it. Applicants respectfully submit that no skilled artisan viewing the figures of Imburgia would consider that these figures in any way disclose the limitations of Applicants’ claim 27.

Imburgia fails to disclose at least the foregoing limitations of claims 25 and 27. Because Imburgia does not teach all of the limitations of at least claims 25 and 27, it cannot disclose all of the limitations of any claims depending from either of them. Accordingly, Applicants respectfully submit that the rejection is improper and should be withdrawn.

Claim Rejections Under 35 U.S.C. § 103:

Claims 40 and 41 were rejected under 35 U.S.C. § 103(a) as allegedly obvious over Imburgia in view of Kirckof et al., United States Patent 6,488,890. Cancellation of these claims renders the rejection moot.

Claim 45 was rejected as allegedly obvious over Imburgia in view of Browne et al., published International Patent Application WO/ 01/56618. Because claim 45 mediately depends from claim 25 that, Applicants respectfully submit, contains patentable subject matter, claim 45 likewise contains patentable subject matter. Accordingly, Applicants respectfully submit that the rejection is improper and should be withdrawn.

Request for Extension of Time

Applicants respectfully request a one month extension of time for responding to the Office Action. The fee of \$65 for the extension is provided for in the charge authorization presented in the PTO Form 2038, Credit Card Payment form, provided herewith.

If there is any discrepancy between the fee(s) due and the fee payment authorized in the Credit Card Payment Form PTO-2038 or the Form PTO-2038 is missing or fee payment via the Form PTO-2038 cannot be processed, the USPTO is hereby authorized to charge any fee(s) or fee(s) deficiency or credit any excess payment to Deposit Account No. 10-1250.

Respectfully submitted,

JORDAN AND HAMBURG LLP

By 
C. Bruce Hamburg
Reg. No. 22,389

Attorney for Applicants

and,

By 
John B. Starr, Jr., Ph.D.
Reg. No. 44,474
Attorney for Applicants

Jordan and Hamburg LLP
122 East 42nd Street
New York, New York 10168
(212) 986-2340